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DESOTO COUNTY, MS  
W.E. DAVIS, CH CLERK

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DESOTO COUNTY, MS  
W.E. DAVIS, CH CLERK

IN THE CHANCERY COURT OF DESOTO COUNTY, MISSISSIPPI

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DEUTSCHE BANK NATIONAL TRUST  
COMPANY, AS TRUSTEE FOR  
MORGAN STANLEY ABS CAPITAL I INC.  
TRUST 2004 HE6, MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2004-HE6,

Plaintiff,

v.

No. 10-04-0963

GREGORY W. CUNNINGHAM, and  
WENDY M. CUNNINGHAM,

Defendants.

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ABSTRACT AND NOTICE OF LIEN LIS PENDENS

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On April 27, 2010, plaintiff Deutsche Bank National Trust Company ("Deutsche Bank"), as Trustee for Morgan Stanley ABS Capital I Inc. Trust 2004 HE6, Mortgage Pass-Through Certificates, Series 2004-HE6, filed its complaint against Gregory W. Cunningham and Wendy M. Cunningham (collectively, "Cunningham") as defendants in the Chancery Court of DeSoto County, Mississippi, Cause Number

**FILED**

**APR 27 2010**

W E DAVIS, CLERK

*David  
Bochner Jr.  
901-524-5154*

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10-04-0963. A copy of said complaint, without exhibits, is attached hereto as Exhibit A.

The real property ("Property") involved in this suit is located in DeSoto County, Mississippi, is commonly known as 8971 Sheltowee Trail, Hernando, Mississippi, and consists of two parcels, i.e., the 2.6 acre parcel described on Exhibit B attached hereto ("Parcel 1") and the .08 acre parcel described on Exhibit C attached hereto ("Parcel 2").

In its complaint, Deutsche Bank alleges that by inadvertence and mutual mistake only the .08 acre Parcel 2 was conveyed by the deed of trust ("First Deed of Trust") recorded April 27, 2004, in Book 1973, Page 297, Chancery Court Clerk's Office, DeSoto County, Mississippi, whereas it was intended that both the 2.6 acre Parcel 1 and the .08 acre Parcel 2 be conveyed by said First Deed of Trust.

Said First Deed of Trust was assigned to Deutsche Bank by assignment recorded July 3, 2007 in Book 2747, Page 703, said Chancery Clerk's Office. Deutsche Bank is the owner and holder of the note and said First Deed of Trust.

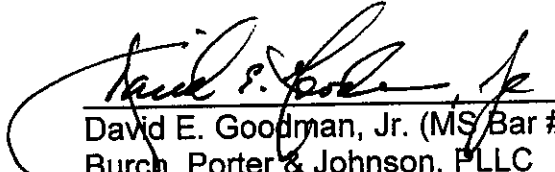
Said First Deed of Trust was foreclosed by Deutsche Bank, and Deutsche Bank purchased said .08 acre Parcel 2 at foreclosure. Because of said mistake in said First Deed of Trust, the substitute trustee's deed conveyed only said .08 acre Parcel 2. The mistake in said First Deed of Trust and in said substitute trustee's deed was discovered after the foreclosure. The indebtedness secured by said First Deed of Trust remains unpaid.

In the complaint, plaintiff Deutsche Bank prays that the Court declare and decree (1) that the First Deed of Trust was intended to convey both Parcel 1 and Parcel 2, that by inadvertence and mistake it conveyed only Parcel 2, that the foreclosure should be

rescinded and expunged from the record, and that said First Deed of Trust should be reformed to convey both Parcel 1 and Parcel 2 as of the date of recording of the First Deed of Trust, (2) that the prior foreclosure be rescinded and expunged from the record, and (3) that said First Deed of Trust be reformed to convey both Parcel 1 and Parcel 2 as of the date of recording of the First Deed of Trust.

Plaintiff Deutsche Bank seeks to fix a lien lis pendens on the property pursuant to Miss. Code Ann. § 11-47-1, *et seq.*

WITNESS MY SIGNATURE this the 27<sup>th</sup> day of April, 2010.

  
David E. Goodman, Jr. (MS Bar #100365)  
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130 North Court Avenue  
Memphis, Tennessee 38103  
(901) 524-5000

Attorney for Deutsche Bank National Trust  
Company, as Trustee for Morgan Stanley ABS  
Capital I Inc. Trust 2004 HE6, Mortgage Pass-  
Through Certificates, Series 2004-HE6

Upon Recording, Please Return to:  
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IN THE CHANCERY COURT OF DESOTO COUNTY, MISSISSIPPI

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DEUTSCHE BANK NATIONAL TRUST  
COMPANY, AS TRUSTEE FOR  
MORGAN STANLEY ABS CAPITAL I INC.  
TRUST 2004 HE6, MORTGAGE PASS-THROUGH  
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Defendants.

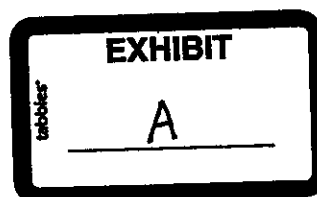
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COMPLAINT FOR DECLARATORY JUDGMENT, TO RESCIND FORECLOSURE,  
AND TO REFORM DEED OF TRUST

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For its complaint, plaintiff Deutsche Bank National Trust Company, as Trustee for Morgan Stanley ABS Capital I Inc. Trust 2004 HE6, Mortgage Pass-Through Certificates, Series 2004-HE6 ("plaintiff"), respectfully states:

1. Plaintiff is a national banking association with its principal place of business in California.
2. Defendants Gregory W. Cunningham and Wendy M. Cunningham (collectively, "Cunningham") are residents of DeSoto County, Mississippi.
3. The property involved in this suit was conveyed to Cunningham, is located in DeSoto County, Mississippi, is commonly known as 8971 Sheltowee Trail, Hernando, Mississippi, and consists of two parcels, i.e., the 2.6 acre parcel described on Exhibit A hereto ("Parcel 1") and the .08 acre parcel described on Exhibit B hereto ("Parcel 2").



4. Parcel 1 was conveyed to Cunningham by deed recorded September 3, 1997 in Book 321, Page 331, Chancery Clerk's Office, DeSoto County, Mississippi, a copy of which deed is attached hereto as Exhibit C. Parcel 2 was conveyed to Cunningham by deed recorded August 11, 1999 in Book 357, Page 328, said Chancery Clerk's Office, a copy of which deed is attached hereto as Exhibit D.

5. Cunningham obtained a mortgage loan from New Century Mortgage Corporation ("New Century") in the amount of \$196,000 evidenced by a note dated April 13, 2004 executed by Cunningham, a copy of which note is attached hereto as Exhibit E. The note was secured by deed of trust recorded April 27, 2004, in Book 1973, Page 297, said Chancery Clerk's Office, a copy of which deed of trust is attached hereto as Exhibit F. Said deed of trust is hereinafter referred to as "First Deed of Trust".

6. By inadvertence and mutual mistake, however, only the .08 acre Parcel 2 was conveyed by said First Deed of Trust, whereas it was intended that both the 2.6 acre Parcel 1 and the .08 acre Parcel 2 be conveyed by said First Deed of Trust.

7. Said note was endorsed in blank by New Century. Said First Deed of Trust was assigned by New Century to plaintiff by assignment recorded July 3, 2007 in Book 2747, Page 703, said Chancery Clerk's Office. A copy of said assignment is attached hereto as Exhibit G.

8. Plaintiff is the owner and holder of said note and said First Deed of Trust.

9. Said First Deed of Trust was foreclosed by plaintiff, and plaintiff purchased said .08 acre Parcel 2 at foreclosure. A copy of the substitute trustee's deed to plaintiff recorded September 17, 2007 in Book 568, Page 529, said Chancery Clerk's Office, is

attached hereto as Exhibit H. Because of said mistake in said First Deed of Trust, said substitute trustee's deed conveyed only said .08 acre Parcel 2.

10. The mistake in said First Deed of Trust and in said substitute trustee's deed was discovered after the foreclosure.

11. The indebtedness evidenced by said note and secured by said First Deed of Trust remains unpaid.

12. Pursuant to Rule 57, Mississippi Rules of Civil Procedure, plaintiff is entitled to a declaratory judgment that said First Deed of Trust was intended to convey both Parcel 1 and Parcel 2, that by inadvertence and mutual mistake it only conveyed Parcel 2, that the foreclosure should be rescinded and expunged from the record, and that said First Deed of Trust should be reformed to convey both Parcel 1 and Parcel 2 as of the date of recording of the First Deed of Trust.

13. A declaratory judgment in plaintiff's favor would terminate the uncertainty or controversy giving rise to this proceeding. A declaratory judgment rendered in plaintiff's favor will serve a useful purpose in clarifying and settling the legal relations in issue.

14. Said foreclosure should be rescinded and expunged from the record.

15. Said First Deed of Trust should be reformed to convey both Parcel 1 and Parcel 2.

16. Plaintiff is entitled to a lien lis pendens on both Parcel 1 and Parcel 2.

WHEREFORE, plaintiff prays that:

1. The Court grant declaratory judgment declaring and decreeing that said deed of trust was intended to convey both Parcel 1 and Parcel 2, that by

inadvertence and mistake it conveyed only Parcel 2, that the foreclosure should be rescinded and expunged from the record, and that said First Deed of Trust should be reformed to convey both Parcel 1 and Parcel 2 as of the date of recording of the First Deed of Trust;

2. Said foreclosure be rescinded and expunged from the record;
3. Said First Deed of Trust be reformed to convey both Parcel 1 and Parcel 2 as of the date of recording of the First Deed of Trust; and
4. Plaintiff have such other and further relief to which it may be entitled.

Respectfully Submitted,

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130 North Court Avenue  
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Attorney for Deutsche Bank National Trust  
Company, as Trustee for Morgan Stanley ABS  
Capital I Inc. Trust 2004 HE6, Mortgage Pass-  
Through Certificates, Series 2004-HE6

2.60 acres, more or less, known as Lot 1 of Shallowee One Lot Subdivision in the Southeast quarter of Section 33, Township 3 South, Range 6 West, DeSoto County, Mississippi, and being more particularly described as follows:

Commencing at the approximate center line intersection of Massey Road and County Line Road, said intersection being accepted as the Southeast corner of Section 33, Township 1 South, Range 6 West DeSoto County, Mississippi; thence North 00 degrees 00 minutes 00 seconds East a distance of 1,178.77 feet to a point; thence North 99 degrees 00 minutes 00 seconds West a distance of 95.99 feet to a steel fence post set, said fence post being the Point of Beginning for the herein described tract of land; thence South 87 degrees 14 minutes 46 seconds West a distance of 109.80 feet to a steel fence post set; thence South 70 degrees 53 minutes 58 seconds West a distance of 88.69 feet to a steel fence post set; thence South 88 degrees 16 minutes 31 seconds West a distance of 229.54 feet to a steel fence post set; thence North 00 degrees 52 minutes 57 seconds West a distance of 285.40 feet to a steel fence post in the South right-of-way line of Shallowee Trail; thence North 89 degrees 07 minutes 03 seconds East along the South right-of-way line of Shallowee Trail a distance of 386.40 feet to a point of curvature and a steel fence post found; thence Southeastwardly a distance of 38.46 feet along a curve to the right having (Delta = 88 degrees 09 minutes 13 seconds, radius = 25.00 feet, Ch.Brg. = South 46 degrees 48 minutes 21 seconds East, Ch.Len = 34.78 feet) to a steel fence post found in the West right-of-way line of Massey Road; thence South 02 degrees 48 minutes 44 seconds East along said West right of way line of Massey Road a distance of 228.26 feet to the Point of Beginning as shown by the survey of Edwin Dale Perryman, dated August 4, 1997.

EXHIBIT

tabbies

B

0.08 acres, more or less, located in the southeast quarter of Section 33, Township 3 South, Range 6 West,  
DeSoto County, Mississippi described as follows:

Commencing at the approximate center line intersection of County Line Road and Massey Road, said  
intersection being commonly accepted as the southeast corner of Section 33, Township 3 South, Range 6  
West, DeSoto County, Mississippi; thence north 00 degrees 00 minutes 00 seconds east a distance of 1173.77  
feet to a point; thence north 90 degrees 00 minutes 00 seconds west a distance of 85.99 feet to a point, said  
point being the point of beginning of the herein described tract of land; thence south 02 degrees 43 minutes 44  
seconds east a distance of 3.30 feet to a point; thence south 83 degrees 45 minutes 34 seconds west a distance  
of 112.89 feet to a point; thence south 67 degrees 13 minutes 01 seconds west a distance of 83.61 feet to a  
point; thence north 87 degrees 34 minutes 18 seconds west a distance of 229.18 feet to a point; thence north 88  
degrees 16 minutes 31 seconds east a distance of 229.54 feet to a point; thence north 70 degrees 53 minutes  
58 seconds east a distance of 83.68 feet to a point; thence north 87 degrees 14 minutes 46 seconds east a  
distance of 109.80 feet to the point of beginning and containing 0.08 acres, more or less.

